No. 21.

Brief (addl.) of Remley for

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Filed Jan. 9, 1898.

Supreme Court of the United States.

T. H. RHODES, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

Additional Argument of Defendant in Error.

THOMAS HEDGE, J. W. BLYTHE, H. M. EICHER AND ROBERT MATHER, COUNSEL FOR PLAINTIFF IN ERROR.

MILTON REMLEY, ATTORNEY-GENERAL, COUNSEL FOR DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States,

T. H. RHODES,
Plaintiff in error.

v.

THE STATE OF IOWA,
Defendant in error.

Error to the Supreme Court of Iowa.

ADDITIONAL ARGUMENT FOR DEFENDANT IN ERROR.

Since the order of the court setting aside the submission in this case, and setting it down for oral argument, we have been served with an argument of Mr. Robert Mather, counsel for plaintiff in error, and will endeavor to reply to the argument thus presented, considering the points presented by him in the order in which they are argued.

I.

It is contended by the counsel that the decision of the supreme court of Iowa in this case virtually reads into the Iowa statutes the words which, in the case of *Bowman v. The Chicago, North-Western Railway Co.*, 125 U. S., 465, were held to be obnoxious to the federal constitution, so far as the same related to interstate commerce.

The specific act of which the plaintiff in error was convicted was transporting a package of intoxicating liquors

from one place, viz. a freight car, to another place, the depot, at Brighton, Iowa, both places being wholly within the state. The conclusion which the learned counsel reaches, as stated above, is based upon the idea that if the entire act of transportation is not protected by the commercial clause of the constitution, that no carrier can transport intoxicating liquors across the line into the state without being amenable to the Iowa law.

The purpose of the Wilson bill was to subject all intoxicating liquors imported into a state, upon its *arrival in such* state, to the operation of the laws of such state enacted in the exercise of its police power. If, then, it is a proper exercise of the police power of a state to prohibit the transportation of liquor from one point to another in the state as a means of suppressing the traffic in intoxicating liquors, it follows, as a logical sequence, that said liquor became subject to such law. In the exercise of its constitutional power, congress has said that intoxicating liquors transported into a state shall, upon arrival in such state, be subject to the laws of such state. It is simply the removal of the protection which the power given to congress by the federal constitution had over intoxicating liquors as an article of interstate commerce.

On the other hand, if the construction contended for by counsel for plaintiff in error prevails, then the Wilson bill is practically robbed of more than half its power and purpose. Before the enactment of the Wilson bill, the protection of the United States constitution accompanied the liquor from the time its transportation was commenced in one state until it reached its destination in another state. The Wilson bill says, however, that it "shall, upon its arrival in such state or territory, be subject to the operation of the laws of such state or territory." The laws of Iowa in substantially the present form were enacted prior to the passage of the Wilson bill. The purpose of all the Iowa laws has been to supperss intemperance. While the use of intoxicating

liquors is not made a criminal act (although becoming intoxicated is), yet the law, by prohibiting its sale and its transportation, has endeavored to discourage and prevent the use and consumption of intoxicating liquors. The Wilson bill recognizes this in the language used: "Intoxicating liquor transported into a state, * * * for *use, consumption, sale or storage* therein, shall, upon its arrival in such state or territory, be subject to the operation of the laws," etc.

Prohibiting the sale of intoxicating liquors by liquor dealers is not enough. The transportation of liquors must also be prohibited for use or consumption, as the Iowa legislature thought, in order to protect the community from the evils of intemperance. If, then, the Wilson bill does not subject the intoxicating liquors transported into a state, to the law of the state, upon its coming within the limits of the state, the protection of the federal constitution still attends it until it reaches the place of its destination. If the purchaser is there to receive it immediately upon its arrival at its place of destination, there is no time when the liquor can be intercepted by the law of the state. The shipper residing in another state can send his retail packages—so-called original packages - directly to the consumer, and the Wilson bill is rendered practically nugatory. This contention, however, it seems, can be determined from the language used. In my argument heretofore filed, reference was made to the opinion of Judge Simington *In re Langford*, 57 Fed. Rep., 570. It is said therein:

"Persons and goods arrive when they reach their destination. It is proper to say that after a man arrives at a city, he goes to his home therein, or to the home of a friend, or to his hotel. So goods, after arrival at the destination, are either delivered to the consignee after notice of arrival, or held until the freight is paid."

Of course, one does not arrive at his destination until he reaches the point to which he intended to go, but he may arrive in a state long before his destination is

reached. It is made in some states an offense to bring diseased cattle or hogs into the state. So, some cities have ordinances prohibiting the bringing into the city of any persons infected with a contagious disease, or clothing or goods so infected. I do not think any case can be found in which it is even urged that the law is not violated whenever the diseased live stock or diseased persons or infected clothing or goods have been brought within the limits prohibited, notwithstanding they have not yet reached the place of their destination. It would be an absurd claim, in case one were arrested for bringing into the state diseased cattle, for him to urge that his offense was not committed until the cattle had reached the place within the state to which they were consigned when outside of the state; *i. e.*, that he should be permitted to expose to contagion stock along the line for possibly 200 or 300 miles further before he became amenable to the law.

If "arrival in the state" means arrival at the place within the state to which the liquors were shipped, the same construction would apply to diseased cattle or infected goods, but when applied to such articles, the error of the construction becomes very manifest. As stated by the Iowa supreme court, "the language of the Wilson bill when considered with reference to the evil sought to be remedied, clearly indicates an intention on the part of congress to make such liquors the subject of state legislation and jurisdiction the moment they cross the boundary of Iowa and enter the state." It is evident, from the reasoning in the case of *Bowman v. Chicago, North-Western Railway Co.*, that had the Wilson bill been in force at the time the case was decided, a very different conclusion would have been reached by this court.

II.

The discussion of the first point has necessarily involved the second point presented by counsel, and what has been

said, together with the original argument for the defendant in error, sufficiently presents the views of the defendant.

III.

In the third paragraph, counsel discusses the question that if the intent of the Wilson bill is to permit the enforcement of state laws which prohibit the transportation of intoxicating liquors into the state from another state, then the Wilson bill as applied to the provisions of the law here in question, and to a transaction like the present, is in excess of congressional power. It is claimed that the proposition does not necessarily question the correctness of the ruling of this court *In re Rahrer*, 140 U. S., 545, because the act for which the defendant in that case was convicted was selling liquor in violation of the Kansas law, whereas the act complained of in the case at bar is an act of transportation. In other words, because of the decision *In re Rahrer*, the Wilson bill as applied to an act of sale is conceded to be within the power of congress, but it is contended as applied to an act of transportation, it is in excess of congressional power.

There is nothing in the constitution of the United States in express terms giving to congress the right to regulate transportation. Transportation is a means of commerce.

"Commerce is undoubtedly traffic," said Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat., 189, "but," he adds, "it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive of a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals in the actual employment of buying and selling, or of barter. If commerce does not

include navigation, the *government of the Union has no direct power over that subject.*"

The culminating act of all commerce is the exchange of commercial articles, the sale, the barter, the passing of property and title thereto from one to another. If we can imagine a transportation disconnected from commerce, such transportation is not within the power of congress to control. This court has held repeatedly that the general government has no control over transportation or commerce beginning and ending within a state. The only justification for holding that congress has power to regulate interstate transportation is because of the fact that it is comprehended in the term "commerce," as an auxiliary or aid thereto. To say, then, that congress may rightfully consent to a state prohibiting the sale of an article which is the subject of interstate commerce, the sale being the ultimate act, for the protection of which the commercial clause of the constitution is extended to transportation as an auxiliary thereto, and has no power to consent to a state prohibiting or regulating every step in the commercial act which culminates in such sale, appears to have no foundation in reason.

There is nothing sacred about transportation. As a federal question, it has no existence except as it is used as an aid to commerce, the act of which culminates in buying and selling. If congress has rightfully taken from intoxicating liquor its character as a subject of interstate commerce, so that the law of the state may prevent its being sold, and because of the law of the state it becomes a contraband article within the state, it necessarily follows that the transportation of intoxicating liquors in the state from the state line to a place within the state, is not protected by the commerce clause of the constitution. When federal protection from the sale of the article is removed, federal protection over a means of effectuating such sale necessarily falls with it.

I cannot agree with the counsel that the Iowa law does not prohibit the traffic in intoxicating liquors. The state-

ment is too broad. The law prohits the manufacture, sale, keeping for sale or transportation of intoxicating liquors to be used as a beverage. It permits, under certain restrictions, sales for mechanical, medicinal or culinary purposes, but the traffic of liquors for other purposes is entirely prohibited. The Iowa law is not like the Dispensary Act of South Carolina, construed in *Scott v. Donald*, 165 U. S., 58.

The Iowa law was enacted by virtue of its police powers which were never surrendered to the federal government. This power is recognized by many decisions of this court. The difficulty is in determining where the police powers of a state end and where the power of congress begins, but any argument which either denies the existence of a power, or which would seek to limit it within certain lines, based upon the assumption that the state may abuse that power, does not commend itself to my judgment. The language of Justice Mathews in the *Bowman case* quoted by counsel with all deference to the distinguished justice, in my judgment did not strengthen his conclusion. To say that a state may not exercise an existing power and right because, forsooth, at some time it may make an improper use of that power, or enact laws ostensibly to secure the health and comfort and ~~business~~ of the community, but really for the purpose of gaining some unfair advantage over the industries of another state, is overthrowing the presumption that all public officers or legislatures, state or national, will in good faith perform their patriotic duty under the constitution. The same argument might, with equal propriety, be applied to restrict the powers of congress, or of the federal government. But in either case, in my judgment, no light is thrown upon the question, what are the powers of the state or the federal government, to assume that if such powers be conceded to either, it may arrogate to itself further power which would encroach upon the rights of the other.

It is argued in behalf of plaintiff that, if the statute in question is sustained as a valid exercise of legislative power, then nothing stands in the way of the destruction, by the legislative department, of the constitutional guarantees of liberty and property. But the possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

The whole argument of the counsel in the third paragraph is predicated upon the idea that if the law of Iowa prohibiting the transportation of intoxicating liquors from one point to another within the state in any way affects interstate commerce, such law was enacted by virtue of a power, assumed by the state to regulate such commerce. Many laws rightfully enacted under the police powers of a state have an effect, directly or indirectly, upon interstate commerce. Chief Justice Marshall in *Gibbons v. Ogden*, 9 Wheat., 1, at page 204, says:

"So, if a state, in passing laws on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which congress may adopt, it does not derive its authority from the particular power which has been granted, but from some other, which remains with the state, and may be executed by the same means. All experience shows that the same measures, or measures scarcely distinguishable from each other, may flow from distinct powers; but this does not prove that the powers themselves are identical. Although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are other situations in which they are sufficiently distinct, to establish their identity.

"In our complex system, presenting the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous state governments, which retain and exercise all power not delegated to the union, contests respecting power must arise. Were it even otherwise, the measures taken by the respective

governments to execute their acknowledged powers, would often be of the same descrip ion, and might, sometimes, interfere. This, however, does not prove that the one is exercising, or has a right to exercise, the powers of the other."

I do not contend for a moment that the state has power to regulate interstate commerce, but do contend that in the exercise of its police powers, it may pass any law which, in the judgment of the legislature tends to conserve the peace, the prosperity, the health and well being of its citizens; and further, that the judgment of the legislature as to what laws are necessary for these ends, is conclusive, so long as such laws do not infringe upon the exclusive power of congress, or are in conflict with the laws of congress enacted under the powers delegated to it.

Before the adoption of the federal constitution, the states had full power of sovereignty. This included the right to determine what should be imported into the state, or the terms upon which imports should be received, and the full power to regulate commerce, not only internal, but with the other states or foreign nations. These rights inhered in the sovereignty of the state. They were not conferred by the constitution, as Chief Justice Marshall said in the opinion quoted by the counsel for the plaintiff in error. When the chief justice said: "That right derives its source from those laws whose authority is recognized by civilized man throughout the world," he referred not to statute law, or to constitutional law, but to the great economic laws, – laws of self interest which throughout all history had been potent in opening the markets of one country to the products of another. No reference was made to any unwritten constitution which prohibited the states, prior to the adoption of the constitution, from having absolute control over all questions relating to internal and external commerce. The constitution delegated to congress power to regulate interstate commerce.

In re Rahrer, 140 U. S., 545, Chief Justice Fuller says:

"The power of the state to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order, and prosperity, is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the constitution of the United States, and essentially exclusive. And this court has uniformly recognized state legislation, legitimately for police purposes, as not, in the sense of the constitution, necessarily infringing upon any right which has been confided expressly or by implication to the national government."

In *Mugler v. State of Kansas*, 123 U. S., 623, referring to *Bartemeyer v. Iowa*, 18 Wall., 129; *Beer Co. v. Mass.*, 97 U. S., 33, this court says:

"These cases rest upon the acknowledged right of the states of the Union to control their purely internal affairs, and in doing so, to protect the health, morals and safety of their people by regulations that do not interfere with the execution of the powers of the general government, or violate rights secured by the constitution of the United States. The power to establish such regulations, as was said in *Gibbons v. Ogden*, 9 Wheat., 203, reaches everything within the territory of the state not surrendered to the national government."

In the *Bowman case*, 125 U. S., 465, Justice Mathews approved of the following language from *Railroad Co. v. Husen*, 95 U. S., 465:

"While we unhesitatingly admit that the state may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering from contagious diseases, or convicts, etc., from entering the state; while for the purpose of self-protection it may establish quarantine and inspection laws, it may not interfere with the transportation into or through the state *beyond what is absolutely necessary for its self-protection.*"

It is said in *Sherlock v. Alling*, 93 U. S., 99:

"In conferring upon congress the regulation of commerce, it was never intended to cut the states off from legislating upon a subject relating to the life, health and liberty of its citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the constitution."

In *Plumley v. Massachusetts*, 155 U. S., 461, this court upheld the statutes of Massachusetts prohibiting the sale of oleomargarine, even in original packages, which was colored to make it look like natural butter, and says:

"The language we have quoted from *Leisey v. Hardin* must be restrained in its application to the case actually presented for determination, and does not justify the broad contention that the state is powerless to prevent the sale of articles manufactured in or brought from another state and subjects of traffic and commerce, if their sale may cheat the people into purchasing what they did not intend to buy, and which is wholly different from what its contents and appearance import."

By a parity of reasoning it cannot be construed to justify the contention that the state is without power to prevent the sale of articles which are detrimental to the health and morals and prosperity of the people of the state.

In *Powell v. Pennsylvania*, 127 U. S., 678, this court said:

"The legislature of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale, or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured out of oleaginous substances or compounds other than those produced from unadulterated milk, or cream from unadulterated milk, to take the place of butter produced from unadulterated milk, or cream from unadulterated milk, will promote the public health and prevent frauds in the sale of such articles. If all that can be said of this legis-

lation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine as an article of food, their appeal must be to the legislature, or to the ballot-box, not to the judiciary. The latter cannot interfere without usurping powers committed to another department of government."

In *New York, N. H. & H. R. R. Co. v. New York*, 165 U. S., 628, it is said:

"According to numerous decisions of this court (some of which are cited in the margin), sustaining the validity of state regulations enacted under the police powers of the state, and which incidentally affected commerce among the states and with foreign nations, it was clearly competent for the state of New York, in the absence of national legislation covering the subject, to forbid under penalties the heating of passenger cars in that state by stoves or furnaces kept inside the car or suspended therefrom, although such cars may be employed in interstate commerce. While the laws of the states must yield to acts of congress passed in execution of the powers conferred upon it by the constitution (*Gibbons v. Ogden*, 9 Wheat. 1, 211), the mere grant to congress of the power to regulate commerce with foreign nations and among the states did not, of itself and without legislation by congress, impair the authority of the states to establish such reasonable regulations as were appropriate for the protection of the health, the lives and the safety of their people."

In *Dent v. West Virginia*, 129 U. S., 114, this court held that:

"The power of a state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure, or tend to secure, them against the consequences of ignorance and incapacity, as well as of deception and fraud."

In *Emmert v. The State of Missouri*, 156 U. S., 296, Mr. Justice Gray reviewed the former decisions of this court and sustained the Missouri statute requiring the license to be paid by peddlers as a proper exercise of the police powers of the state, and not an invasion of the powers of congress to regulate and control commerce.

State v. Wheelock, 95 Iowa, 977,

In *Commonwealth v. Zelt*, 138 Pa., 615, it was held that the prohibition of the sale of imported intoxicating liquors in original packages to minors and persons of known intemperate habits, is a valid exercise of the police powers of the state, and not in conflict with the United States constitution.

The Iowa law in question was enacted by the legislature in the exercise of its police power to regulate its own internal affiairs and to conserve the public health, morals and prosperity. The state did not claim power to regulate interstate commerce, nor does the fact that interstate commerce is to some degree affected thereby, prove that it is an exercise of power to regulate interstate commerce.

This police power of the state was not derived from the constitution of the United States, nor was it derived through the consent of congress, but it was inherent in the sovereignty of the state, was never surrendered to congress, and it reaches to everything within the state and relates to every subject upon which the state may legislate, which include all except those given by the constitution to the exclusive control of congress.

Mr. Justice Daniel, in *Cooley v. The Board of Regents*, 12 Howard, 299, at page 326, says:

"The power delegated to congress by the constitution relates properly to the terms on which commercial engagements may be prosecuted; the character of the articles which they may embrace; the permission or terms according to which they may be introduced; and do not necessarily or even naturally extend to the means of precaution and safety adopted within the waters and limits of the states by the authority of the latter for the preservation of vessels and cargoes, and the lives of navigators or passengers."

In *Bowman v. Chicago & Northwestern Ry. Co.*, 125 U. S., 465, the court quotes the language of Justice Catron in the *License cases*:

"The assumption is that the police power was not touched by the constitution, but left to the states as the

constitution found it. This is admitted, and whenever a thing, from character or condition, is of a description to be regulated by that power in the state, then the regulation may be made by the state, and congress cannot interfere. But this must always depend on facts subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to, and is subject to be regulated as a part of, foreign commerce, or of commerce among the states. If, from its nature, it does not belong to commerce, or if its condition, from putrescence or other cause, is such, when it is about to enter the state, that it no longer belongs to commerce, or, in other words, is not a commercial article, then the state power may exclude its introduction; and, as an incident to this power, a state may use means to ascertain the fact."

The opinion of Judge Catron also quoted in *Bowen v. Railway Co.*, denies to the state the power to determine what shall or shall not be the subjects of commerce. He says upon the theory, that the state had power to determine what shall be articles of commerce:

"The power to regulate commerce, instead of being paramount over the subject, would become subordinate to the state police power; for it is obvious that the power to determine the articles which may be the subjects of commerce, and thus circumscribe its scope and operation is, in effect, a controlling one."

The language of Judge Catron in the *License cases*, 5 How., 504, did not receive the approval of the majority of the court. Only Judge Nelson, so far as it appears in the report, concurred with him. But by its approval in the *Bowman case*, it must be considered as the enunciation of this court.

It is apparent, then, that some articles which may be transported into a state from another state, may not be the subjects of interstate commerce. It is also deducible from the opinion of this court that congress alone has the power to determine what shall or shall not be the subjects of interstate commerce. This power is included within

the power to regulate commerce. There are, however, some very respectable authorities that hold that it is within the exercise of the police powers of the state to determine what is necessary to be prohibited from sale in the markets of the state for the protection of the health, morals and well-being of the citizens, and if the laws therefor were enated without discrimination against the citizens of other states, and in good faith for the purpose of protecting the people of the state from the evil which the legislature determined the welfare of the state demands, then such articles could not be considered articles of commerce.

Something of this idea appears in *Scott v. Donald*, 165 U. S., 107. Mr. Justice Shiras, for the court, says:

"So long, however, as state legislation continues to recognize wines, beer and spirituous liquors as articles of lawful consumption and commerce, so long must continue the duty of federal courts to afford to such use and commerce the same measure of protection, under the constitution and laws of the United States, as is given to other articles."

And again in the same case:

"It is sufficient for the present case to hold, as we do, that when a state recognizes the manufacture, sale and use of intoxicating liquors as lawful, it cannot discriminate against the bringing of such articles in, and importing them from other states: that such legislation is void as a hindrance to interstate commerce, and an unjust preference of the products of the enacting state as against similar products of other states."

This language is inconsistent with the former utterances of the court, except upon the theory that the Wilson bill has removed from intoxicating liquor its character as an article of interstate commerce when the laws of the state do not recognize it as an article of lawful consumption and commerce.

But the power to regulate interstate commerce necessarily involves the power to determine what shall or shall not be regulated or considered the subject of interstate

commerce. Congress, possessing the power to regulate interstate commerce, must, without question, have the power to determine "the character of the articles which they (commercial engagements) embrace." It has been held that the inaction of congress with reference to subjects of commerce, national in their character, must be accepted as the will of congress that commerce in such subjects should be free and untrammeled.

In re Rahrer, 140 U. S., 545, it is said:

"No reason is perceived why, if congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competence to do so. The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen, not from a denial of the power of congress, when exercised, but upon the question whether the inaction of congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the states. We recall no decision giving color to the idea that, when congress acted, its action would be less potent than when it kept silent. The framers of the constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically committed to its charge. The manner of that disposition brought into determination upon this record involves no ground for adjudging the act of congress inoperative and void."

The effect, then, of the Wilson bill is to remove the interstate commercial character of intoxicating liquors so that the same, when brought within the jurisdiction of a state, are subject to the police regulations of such state. This is by no means delegating to the state power to legislate upon a subject exclusively within the control of congress, but it is prescribing a general, common rule which operates throughout the whole United States, that commerce in intoxicating liquors shall not be henceforth free and untrammeled, but upon entering into a state, is divested of its commercial character and becomes forthwith subject to the laws of the state.

In *Brown v. Maryland*, 12 Wheat., 442, Chief Justice Marshall said:

"It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports, to escape the prohibition in the constitution."

It is contended that the later cases hold that the protection of the commercial clause of the constitution continues until there has been a sale by the importer. The counsel for the plaintiff concedes that the Wilson bill can properly be considered as releasing intoxicating liquors from their character as articles of interstate commerce after they reach their destination and before sale. That is, the Wilson bill may be considered to be a withdrawal of federal protection from such liquors before the interstate commerce act was completed by a sale of the liquors. Certainly, if it is competent for congress to withdraw the federal protection from a subject heretofore recognized as a subject of interstate commerce, at one point of time, or at one stage of the commercial transaction, why, in the nature of things, may not congress, with equal propriety, select another time or another stage in the commercial transaction in which the federal protection is withdrawn? It is the exercise of the same power exactly, and the same kind of power, fixing the point at which liquors lose their character as subjects of interstate commerce at one time, as it is fixing it at another time or stage in the commercial engagement. There can be no distinction made. If, as our friends concede, it is within the province of congress to declare intoxicating liquors, immediately upon their arrival at their place of destination and before sale, sub-

ject to the laws of the state, and without the protection of the commercial clause of the constitution, I think it must be apparent that it is equally within the power of congress to declare such liquors subject to the laws of the state and without the protection of the commercial clause of the constitution immediately upon their arrival at any point within the state, or upon their crossing the boundary line.

The power of the state to prohibit the transportation from a point within the state to another point within the state, of contraband articles, is not derived from the Wilson bill, or the silence of congress, or from the federal constitution. Unless the power to legislate upon this subject was granted by the constitution of the United States to congress, then that power was retained by the states.

In regard to intoxicating liquors manufactured or produced within the state, I do not think the power of the state to pass such a law would be questioned. It is a valid law, except so far as it may be in conflct with the law of congress, or the will of congress, indicated either by its silence or by its enactments. But the Wilson bill has expressed the will of congress with reference to intoxicating liquors: that they shall be, upon their *arrival in such state*, subject to the operation of the laws of such state enacted in the exercise of its police power, to the same extent and in the same manner as though such liquors had been produced in such state. The construction contended for by the plaintiff in error would strike out one-half or more of the Wilson bill, and would deny to congress the power to determine what articles shall be the subjects of interstate commerce, or when the protection of the commercial clause of the federal constitution shall cease.

The decision of the Iowa supreme court in the case at bar is in harmony with the decision of this court in *Re Rahrer*, and is the only construction of the Wilson bill

that will give force and effect to all of its language and effectuate the end and the object sought to be obtained in its enactment.

Respectfully submitted,

MILTON REMLEY,
Attorney-General,
For the State.